Pendergast, Jim

From: Fertik, Rachel
Sent: Monday, July 08, 2013 6:24 PM
To: Frithsen, Jeff
Subject: FW: SAB review charge questions - draft policy background
Attachments: background Charge to reviewers.docx

Hi Jeff,
I hope you had a nice Independence Day weekend.

I'm writing to inquire as to the status of the Charge Questions. When we last discussed it, you were going to consider the background text I drafted, and then circulate the resulting draft back to WD for review up the OW chain prior to submitting as a final draft to SAB.

Thanks,
Rachel

From: Fertik, Rachel
Sent: Tuesday, June 18, 2013 5:50 PM
To: Frithsen, Jeff
Cc: Evans, David; Kaiser, Russell; Downing, Donna; Alexander, Laurie
Subject: SAB review charge questions - draft policy background

Jeff,
As we just discussed, attached is the draft policy background for the SAB charge. This draft has only been reviewed up to and including Dave Evans.

Once you have decided what, if any, of this document you feel is appropriate for inclusion in the introduction to the charge questions, please route the resulting document back to Wetlands so that we can route it up through OW for review. Let us know what your deadline is for completing that review.

FYI - I circulated a prior version of the charge questions when I circulated the policy background document, and your updated version of the questions is very consistent with the few comments that I received.

Let me know if you have any questions.

Thanks,
Rachel

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Science Advisory Board Review of EPA's Draft Report,
Connectivity of Streams and Wetlands to Downstream Waters:
A Review and Synthesis of the Scientific Evidence

Background

Over the last ten years, the legal landscape of Clean Water Act (CWA) jurisdiction has changed as a result of two Supreme Court cases. The changing legal landscape of CWA jurisdiction is primarily the result of the courts examination of parts of the regulatory definition of "waters of the United States," which determines which waters are protected under the Act. Several key terms and concepts used in those Supreme Court decisions were not fully explained by the Court. This report provides policy makers with a summary of peer-reviewed scientific literature relevant to those terms and concepts so as to inform decisions regarding the current geographic scope of the CWA. It is the centerpiece of an array of information that inform policy decisions on this issue, including technical, scientific, and legal information, as well as implementation considerations and public input.

With that in mind, it is important to be clear that this report does not attempt to define "waters of the U.S." or directly address other policy questions related to the Supreme Court opinions. These and other regulatory decisions consider factors and sources outside of the scientific literature, so defining these terms is outside the scope of this report and this review. Rather, this report seeks to inform those policy decisions and legal definitions by providing a general scientific understanding of the connectivity and effects of broad categories of waters under consideration for policy development.

The main groups of waters under consideration for policy development are at the core of the three policy questions arising in the wake of the Supreme Court decisions, which are listed below with their scientific translations. The translation process between policy and science was necessary to bridge the gap between the law or policy and the relevant science. In extended discussions between regulatory and scientific personnel, statutory and regulatory terms required to communicate the policy questions that determined the scope of this review were mapped to a

set of scientific correlates which were then used to search the technical literature and summarize relevant scientific evidence. This is important to note because some common terms (such as "tributary" and "significance") have different meanings in scientific and legal contexts. Further, scientific and legal disciplines have terms-of-art for which no exact cross-discipline translation exists. For example, the types of aquatic ecosystems under review here are identified in the CWA and other legal texts as "tributaries," "adjacent waters," "other waters," "traditionally navigable waters," and "interstate waters." These are statutory terms with regulatory definitions formed through legislation, regulatory process, and judicial review. Other than "tributary," all are legal terms-of-art and lack scientific definitions.

At the heart of the translation, we find that the three key scientific questions, as a group, are essentially asking "What is the evidence on physical, chemical, and biological connectivity and effect of tributaries, wetlands, and open waters to downstream waters?" These scientific questions about three groups of waters are the basis for this inquiry. They also explain the structure of the report, in which the literature pertaining to the three groups of waters are reviewed in separate chapters. Organizing the inquiry in this manner facilitates decision makers' use of the resulting synthesis of scientific literature.

The nature of policy development requires that the technical input from this report be based on widely accepted scientific concepts and evidence in order to draw appropriate conclusions about the regulatory definitions. As such, the review of the document should not focus on the policy questions, but rather on the completeness of the synthesis and accuracy of the scientific conclusions addressing connectivity and effects of broad categories of waters to downstream waters.

Policy question	Scientific question
Do tributaries have a significant nexus to downstream Traditional Navigable Waters?	What is known about the chemical, physical or biological effect of streams on downstream waters?
Do adjacent waters have a significant nexus to downstream Traditional Navigable Waters?	What is known about the chemical, physical or biological relationship between riparian or floodplain waters and downstream waters?
Do isolated waters have a significant nexus to downstream Traditional Navigable Waters?	What is known about the chemical, physical or biological relationship between geographically isolated waters and downstream waters?